

HOUSE BILL 1820

By Hawk

AN ACT to amend Tennessee Code Annotated, Title 63
and Title 68, relative to health.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-11-207(b)(1), is amended by deleting the subdivision and substituting the following:

(b)(1) In those cases where the conditions of any nursing home, home for the aged, traumatic brain injury residential home, assisted care living facility, or adult care home are, or are likely to be, detrimental to the health, safety, or welfare of the patient or resident, the commissioner has the authority to suspend the admission of any new patients or residents to the facility pending a prompt hearing before the board, or an administrative judge, if the board cannot be convened promptly.

SECTION 2. Tennessee Code Annotated, Section 68-11-207(b)(5), is amended by deleting the subdivision and substituting the following:

(5) Within ten (10) days of receiving this notice or a lesser time frame when deemed necessary by the board to ensure the health, safety, and welfare of residents, any facility for which admissions have been suspended pursuant to this part shall submit a corrective action plan to the board delineating the measures to be taken to address violations and associated time frames. If it is deemed by the board to be necessary to ensure the health, safety, and welfare of residents, the commissioner may require any facility for which admissions have been suspended pursuant to this part to take all necessary actions to correct violations immediately.

SECTION 3. Tennessee Code Annotated, Section 68-11-207(f), is amended by deleting subdivision (f)(2) and redesignating the remaining subdivisions accordingly.

SECTION 4. Tennessee Code Annotated, Section 68-11-207(j), is amended by deleting the subsection and substituting the following:

(j)

(1) Nursing homes, homes for the aged, traumatic brain injury residential homes, assisted care living facilities, and adult care homes shall inform residents verbally and in writing of their right to file a complaint with the state at any time, the process for filing a complaint, and contact information for filing a complaint. The facility shall also advise residents of the availability of a long-term care ombudsman and how to contact the ombudsman for assistance. Verbal and written communication to the resident must indicate, at a minimum, that complaints regarding suspected adult abuse, neglect, or exploitation must be reported to the adult protective services program. Complaints regarding licensure must be reported to the board. All other complaints must be reported to the appropriate state designated oversight entity. Complaints received by the nursing home, home for the aged, traumatic brain injury residential home, assisted care living facility, or adult care home provider must be forwarded to the appropriate state oversight entity.

(2) A facility licensed pursuant to this part shall not prohibit or discourage the filing of complaints or use intimidation against any person filing a complaint.

(3) A facility licensed pursuant to this part shall not retaliate against the resident or the person acting on behalf of the resident in any way. Such nonpermissible actions include, but are not limited to:

(A) Increasing charges;

(B) Decreasing services, rights, or privileges;

(C) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(D) Harassing, abusing, or threatening to harass or abuse a resident in any manner.

(4) Persons acting in good faith in filing a complaint are immune from any liability, civil or criminal.

(5) A facility licensed pursuant to this part shall place a resident manager, substitute caregiver, or employee against whom an allegation of abuse, neglect, or exploitation has been made on administrative leave of absence until the investigation is complete.

(6) Investigations must be completed by the appropriate state oversight entity within time frames established in applicable statutes or regulations, or as expeditiously as necessary to ensure the health, safety, and welfare of residents.

(7) Board administrative staff shall maintain a file of reported complaints. The file must include the name of the facility against whom the complaint is filed, the date the complaint is filed, the action taken by the board, if any, on the complaint, and the date of the action taken.

SECTION 5. Tennessee Code Annotated, Sections 68-11-213(e), (f), and (g), are amended by deleting the subsections and substituting the following:

(e) If a determination is made by the department that a home for the aged, assisted care living facility, adult care home, or traumatic brain injury residential home is subject to the requirements of licensure under this part, a notice shall be issued by the department stating the determination and requiring that application for licensure must be made to the department within thirty (30) days of the receipt of that notice. The thirty-day application period does not serve to waive any civil penalties that may be assessed for unlicensed operation of a facility under this part.

(f) Failure of the home for the aged, assisted care living facility, adult care home, or traumatic brain injury residential home to make application to the department for licensure within thirty (30) days from the date of the receipt of the notice may result in the initiation of injunctive relief and any other relief available in law or equity against any person who owns, operates, manages, or participates in the management of the facility.

(g) In addition to requiring that the home for the aged, assisted care living facility, adult care home, or traumatic brain injury residential home make application for licensure, the department may immediately initiate a petition for injunctive relief or any other relief available in law or equity. The department may direct the home for the aged, assisted care living facility, adult care home, or traumatic brain injury residential home to immediately cease and desist operations when the health, safety, or welfare of the patients or residents requires emergency action. If the home for the aged, assisted care living facility, adult care home, or traumatic brain injury residential home does not comply with the directive to cease and desist, then the department may initiate proceedings for injunctive relief and any other relief available in law or equity.

SECTION 6. Tennessee Code Annotated, Section 68-11-213(i)(2), is amended by deleting the subdivision and substituting the following:

(2) The board for licensing health care facilities is authorized to establish as part of its comprehensive system of quality assurance and enforcement a system for assessing civil monetary penalties, including appropriate due process, for assisted care living facilities, homes for the aged, adult care homes, and traumatic brain injury residential homes that are in serious violation of state laws and regulations, resulting in endangerment to the health, safety, and welfare of residents.

SECTION 7. Tennessee Code Annotated, Section 68-11-213, is amended by adding the following as new subsections:

(k)

(1) After notification of deficiencies following a licensure or complaint survey, any facility licensed under this part has fifteen (15) days from the date of notification to submit an acceptable plan of correction. Should the facility submit a plan of correction that is deemed unacceptable by the department, then the facility has an additional fifteen (15) days from the date of notification that the plan of correction is unacceptable to submit an acceptable plan of correction. The department shall provide a facility with no less than three (3) opportunities to submit an acceptable plan of correction and provide clear guidelines so that the facility understands what a plan of correction must include to be deemed acceptable.

(2) If a facility is not able to submit an acceptable plan of correction after three (3) attempts, then a representative from the facility shall appear before the board and submit a plan of correction for the board's approval.

(l) After receipt of an acceptable plan of correction, the department shall revisit a facility to determine whether the cited deficiencies have been corrected in accordance with the plan. If the same or different deficiencies are cited on the revisit survey, then the department may pursue disciplinary action against the facility, including the costs associated with subsequent revisit surveys.

SECTION 8. Tennessee Code Annotated, Section 68-11-1003(b), is amended by deleting the subsection and substituting the following:

(b) The department shall also include an individual's name on the registry when it receives a copy of a criminal disposition from the Tennessee bureau of investigation or another federal, state, or local law enforcement agency, court, or criminal justice agency indicating that a criminal disposition against the named individual was the result of an

offense against a vulnerable person, but only if the copy of the court's criminal disposition order indicates that:

- (1) The individual was notified that, as a consequence of the conviction, the individual will be placed on the abuse registry;
- (2) The offense constitutes an offense against a vulnerable person; and
- (3) The court has ordered placement on the abuse registry pursuant to this part and the clerk is required to forward such judgment to the department.

SECTION 9. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.